COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 28, 2002

PETITION OF

VIRGINIA ELECTRIC AND POWER COMPANY CASE NO. PUE-2002-00181

and

DOMINION RETAIL, INC.

For an exemption of agreement for wholesale sales of power from the filing and prior approval requirements of Chapter 4, Title 56 of the Code of Virginia or, in the alternative, for approval of wholesale power service agreement under Chapter 4, Title 56 of the Code of Virginia, and for expedited consideration

ORDER

On April 1, 2002, Virginia Electric and Power Company ("Dominion Virginia Power") and Dominion Retail, Inc. ("Dominion Retail") (collectively, "Companies"), filed a petition under Chapter 4 (§ 56-76 et seq.) of Title 56 of the Code of Virginia ("Code") for exemption from the prior approval and filing requirements thereof or, in the alternative, for approval of Dominion Virginia Power's wholesale sales of power at cost-based rates to Dominion Retail, and for expedited consideration. By Order dated May 30, 2002, and pursuant to § 56-77 of the Code, the Commission extended its sixty-day review period in this proceeding an additional thirty days.

On June 17, 2002, the Commission Staff ("Staff") filed a report concluding that the proposed arrangement is not in the public interest. Staff recommends that the petition be rejected, without prejudice, until: (1) Dominion Virginia Power and Dominion Retail can file an agreement with this

Commission that affirms, with the Federal Energy Regulatory Commission's ("FERC") approval, that this Commission may exercise continuing authority over the affiliate contract such that if the Commission were to terminate the authority granted to the Companies, all contracts entered into under the agreement would immediately be null and void; and (2) Dominion Virginia Power can assure that the agreements would not have any negative effects on the fuel factor and controls are in place that allow the Staff to confirm that the fuel factor will not be negatively affected.

On June 25, 2002, the Companies filed a response to Staff's report. The Companies assert, among other things, that: (1) the Commission may exercise its continuing authority over the agreements pursuant to Chapter 4 of the Code; (2) Dominion Retail will be in no better position than any of its competitors to successfully bid for the Company's output; and (3) there is no danger to the fuel factor margin-sharing mechanism from this proposal.

On June 27, 2002, Washington Gas Energy Services ("WGES") filed comments on the petition. WGES expresses concerns regarding, among other things, the proposed bidding process, which provides competitive suppliers a four-hour window to evaluate a proposed transaction and submit a competing bid. WGES believes the Commission should deny the petition as filed, or allow for a bidding window of at least three business days.

On June 27, 2002, the Virginia Committee for Fair Utility Rates ("Virginia Committee") filed a Notice of Participation as Respondent. The Virginia Committee addresses, among other things: (1) the impact on Dominion Virginia Power's fuel factor; (2) the impact on the development of competition in Virginia; and (3) the prices permitted under the arrangement. The Virginia Committee requests that the Commission deny the Companies' petition.

NOW THE COMMISSION, having considered the pleadings and the applicable law, is of the opinion and finds as follows. An exemption from the filing and prior approval requirements of Chapter 4, Title 56 of the Code for the wholesale power agreements between Dominion Virginia Power and Dominion Retail is not in the public interest and should be denied. Review of such arrangements is necessary to ensure protection of the public interest. We find that, subject to the requirements discussed below, the currently proposed arrangement for wholesale sales of power by Dominion Virginia Power at cost-based rates to Dominion Retail is in the public interest and should be approved.

In its report, Staff raises questions regarding the Commission's continuing authority, under Chapter 4 of the Code, over this arrangement. The Companies, however, state that the Commission retains authority under Chapter 4. Further, the Companies propose to stipulate the following:

> Dominion Virginia Power and Dominion Retail recognize and agree that the State Corporation Commission has continuing supervisory control over the power agreement between the Companies and has the authority to exercise the provisions of §§ 56-78 and 56-80 of the Code of Virginia in the future with respect to the agreement and transactions thereunder. The Companies further commit not to assert in any forum that FERC's jurisdiction over the rates, terms and conditions of the agreement preempts Virginia law, including the Affiliates Act.

In this regard, we note that the General Assembly has directed the Commission to retain authority over arrangements between public service companies and their affiliated interests. Section 56-80 of the Code provides that "the Commission shall have continuing supervisory control over the terms and conditions of such contracts and arrangements as are herein described so far as necessary to protect and promote the public interest." That same section also requires that "[e]very order of the Commission approving any such contract or arrangement shall be expressly conditioned upon the reserved power of the Commission to revise and amend the terms and conditions thereof, if, when and as necessary to protect and promote the public interest." In addition, § 56-590 G of the Virginia Electric Utility Restructuring Act ("Act") states that, except as provided in § 56-590 B 5 (regarding, among other things, utility transfers under Chapter 5 of the Code), nothing in the Act "shall be deemed to abrogate or modify the Commission's authority under Chapter 3 (§ 56-55 et seq.), 4 (§ 56-76 et seq.) or 5 (§ 56-88 et seq.)" of Title 56 (emphasis added).

We find that, for the agreements to be in the public interest, the Commission must retain authority under Chapter 4, including the authority to revoke our approval of such arrangement. We concur with the Companies that the Commission should not be preempted by FERC from exercising such authority. We also agree with the Companies that, if the Commission later determines continuation of such arrangement is no longer in the public interest, then the Commission should have the authority to take corrective action. Given the critical importance of our continuing jurisdiction under Chapter 4 of the Code, we will require the Master Power Purchase and Sale Agreement ("Agreement"), which must be approved by FERC, to include the following terms:

> The Virginia State Corporation Commission has continuing supervisory control over the power agreements between Dominion Virginia Power and Dominion Retail and has the authority to exercise the provisions of §§ 56-78 and 56-80 of the Code of Virginia in the future with respect to such agreements and transactions thereunder, including the authority to terminate such agreements and transactions.

In addition, to ensure that the Commission is able to fulfill its obligations under Chapter 4, the Agreement also shall be modified to provide that if the Commission determines by order that the Agreement and/or all agreements and transactions entered into thereunder must be terminated to protect and promote the public interest, then the Agreement and/or all agreements and transactions entered into thereunder shall terminate 30 days after the date of the Commission's order.

In its report, Staff also states that the arrangement may have negative effects on the fuel factor. The Companies assert, however, that there is no danger to the fuel factor margin-sharing mechanism. We do not find that the possibility of a negative impact on the fuel factor warrants rejection of the proposed arrangement. Rather, we rely upon our continuing authority over this arrangement to ensure that it remains in the public interest.[1] For example, the Commission retains authority to modify or terminate the arrangement if we find that it negatively impacts the fuel factor. In addition, the Commission may address negative impacts during Dominion Virginia Power's fuel factor proceedings by, for example, imputing revenues to Dominion Virginia Power for margin sharing purposes if we find that the margin-sharing mechanism has been negatively impacted.

We note that, among the factors considered in finding the arrangement in the public interest, we must ensure that Dominion Virginia Power can continue to provide reliable service to its retail customers in the Commonwealth. Accordingly, we will direct Staff to monitor the effects of the arrangement approved herein on the fuel factor and on Dominion Virginia Power's provision of reliable service to retail customers in the Commonwealth. Finally, the Companies assert that Dominion Retail will be in no better position than any of its competitors to successfully bid for Dominion Virginia Power's output; we will direct Staff to monitor this, as well.[2]

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[1] We have no expectation of improper activity in the market or otherwise by the Companies under the arrangement. Our continuing jurisdiction, however, is both obligated by law and necessary to enable us to address any such situation if it is alleged to occur.

[2] We also note that WGES expresses concerns with respect to the bidding process. The Virginia Committee expresses concerns regarding the fuel factor, competition, and prices under the arrangement. We recognize these concerns and expect that the monitoring we require of Staff in this Order will encompass issues such as those raised by WGES and the Virginia Committee.

Accordingly, IT IS ORDERED THAT:

(1) Dominion Virginia Power's request for an exemption from the requirements of § 56-77 A of the Code of Virginia for its proposed wholesale power agreements with Dominion Retail is hereby denied.

(2) The Master Power Purchase and Sale Agreement shall be revised to include the following terms:

> The Virginia State Corporation Commission has continuing supervisory control over the power agreements between Dominion Virginia Power and Dominion Retail and has the authority to exercise the provisions of §§ 56-78 and 56-80 of the Code of Virginia in the future with respect to such agreements and transactions thereunder, including the authority to terminate such agreements and transactions.
>
> If the Virginia State Corporation Commission determines by order that this agreement and/or all agreements and transactions entered into hereunder must be terminated to protect and promote the public interest, then this agreement and/or all agreements and transactions entered into hereunder shall terminate 30 days after the date of the Virginia State Corporation Commission's order.

(3) Pursuant to § 56-77 of the Code of Virginia, Dominion Virginia Power is hereby granted approval to make wholesale sales of power at cost-based rates to Dominion Retail, as described in this proceeding and conditioned upon the inclusion in the Master Power Purchase and Sale Agreement of the additional terms in ordering paragraph (2), above. Such approval, however, is not granted until the additional terms in ordering paragraph (2), above, are included in the agreement and such agreement, as required to be amended herein, is affirmatively approved by order of the Federal Energy Regulatory Commission.[3]

[3] Acceptance for filing by the FERC is not the equivalent of an affirmative approval by order of the FERC.

(4) Should there be any changes in the terms and conditions of the arrangement for wholesale sales of power at cost-based rates to Dominion Retail, from those described in this proceeding and required herein by the Commission, prior approval from the Commission shall be required for the new arrangement.

(5) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code of Virginia hereafter.

(6) The approval granted herein shall not have any ratemaking implications.

(7) The Commission reserves the right to examine the books and records of Dominion Retail in connection with the approval granted herein whether or not the Commission regulates such affiliate.

(8) Dominion Virginia Power shall include the wholesale sales of power to Dominion Retail as approved herein in its Annual Report of Affiliate Transactions submitted to the Director of Public Utility Accounting of the Commission.

(9) The Commission Staff shall monitor the effects of the arrangement approved herein on the fuel factor and on Dominion Virginia Power's provision of reliable service to retail customers in the Commonwealth.

(10) The Commission Staff shall monitor whether the arrangement approved herein places Dominion Retail in a better position than its competitors to successfully bid for Dominion Virginia Power's output.

(11) The Commission Staff and the Companies shall confer to develop the categories of information necessary for Staff to perform the monitoring activities required in this Order.

(12) The approval granted herein shall expire on December 31, 2004, such that additional transactions cannot be entered into after December 31, 2004. Transactions entered into prior to

December 31, 2004, pursuant to our approval granted herein, may continue until the expiration of the terms of such transactions, which shall not exceed one year pursuant to the terms of the Master Power Purchase and Sale Agreement. Should the Companies wish to continue operating under the Master Power Purchase and Sale Agreement beyond December 31, 2004, prior Commission approval shall be required for such continuation.

(13) There appearing nothing further to be done in this matter, it is hereby dismissed.